

STATE OF MICHIGAN
COURT OF APPEALS

BENJAMIN L. CATER,

Plaintiff-Appellant,

v

DONALD J. BORICH and CAROL S. BORICH,

Defendants-Appellees.

UNPUBLISHED

July 15, 2008

No. 278648

Ingham Circuit Court

LC No. 06-000978-NI

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition in this no-fault threshold injury case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On April 23, 2004, plaintiff's vehicle was struck head-on by a vehicle driven by Donald Borich. Plaintiff suffered a cut lip, facial contusions, and a large contusion from his shoulder belt. Plaintiff remained in the hospital overnight, and was discharged with pain medication. Subsequently, it was determined that plaintiff suffered various injuries as a result of the accident, including a broken nose, and disc desiccation and bulging at L4-5.

At the time of the accident, plaintiff worked as a maintenance man. He was off work for four weeks following the accident. Plaintiff left this employment in July 2004, and in September 2004 began working full-time for a landscaping company. In September 2006, plaintiff began working as an auto body teaching assistant for the Lansing School District. Plaintiff assists the instructor in teaching students the full range of tasks involved with auto body repair.

Prior to the accident, plaintiff played pick-up basketball, went hunting and fishing, and restored vehicles. Plaintiff stated that after the accident, he still rifle hunted, but restricted himself from bow hunting. He still restored vehicles, but did not lift items weighing more than 30 to 50 pounds.

Plaintiff filed suit alleging that the injuries he sustained in the accident constituted a serious impairment of body function. Defendants moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that plaintiff's injuries did not meet the threshold to constitute a serious impairment of body function. The trial court granted defendants' motion, finding that the injuries to plaintiff's face and back were objectively manifested and constituted impairments of

important body functions, but concluding that no evidence created an issue of fact as to whether the impairment affected plaintiff's general ability to lead his normal life.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A serious impairment of body function is "an objectively manifested impairment of an important body function that affects the person's general ability to lead his or her normal life." MCL 500.3135(7). For an impairment to be objectively manifested, there must be a medically identifiable injury or a condition that has a physical basis. *Jackson v Nelson*, 252 Mich App 643, 652-653; 654 NW2d 604 (2002). The injury must be capable of objective verification by qualified medical personnel either as visually apparent or as detectable by medical testing. *Netter v Bowman*, 272 Mich App 289, 305; 725 NW2d 353 (2006). Whether a person has suffered a serious impairment of body function is a question of law for the court if there is no factual dispute concerning the nature and extent of the injuries, or if there is a factual dispute concerning the nature and extent of the injuries but the dispute is not material to whether the plaintiff has suffered a serious impairment of body function. MCL 500.3135(2)(a).

Determining whether a person is generally able to lead his or her normal life requires considering whether the objectively manifested impairment has affected the course and trajectory of the person's life. The court must examine how, to what extent, and for how long the plaintiff's life has been affected by the impairment. The court must examine the plaintiff's life before and after the accident, and consider the significance of the affected aspects on the course of the plaintiff's life. In order to determine whether the plaintiff's general ability to lead his or her normal life has been affected by the objective impairment, the court may consider factors such as the nature and extent of the impairment, the type and length of treatment required, the duration of the impairment, the extent of any residual impairment, and the prognosis for eventual recovery. *Kreiner v Fischer*, 471 Mich 109, 131-134; 683 NW2d 611 (2004).

Plaintiff argues that the trial court erred by granting defendants' motion for summary disposition. We disagree.

The injuries plaintiff suffered as a result of the accident, disc protrusions in his back, a facial fracture, and a broken nose, were detected by medical testing, i.e., an MRI examination and x-rays, and thus were objectively manifested. *Netter, supra* at 305. The use of the back is an important body function, *Shaw v Martin*, 155 Mich App 89, 96; 399 NW2d 450 (1986), as is the ability to breathe properly through the nose. The trial court did not err in concluding that no question of fact existed as to whether plaintiff suffered objectively manifested injuries, and whether those injuries constituted serious impairments of important body functions.

Similarly, the trial court did not err in determining that no question of fact existed as to whether those impairments of important body functions affected the course and trajectory of plaintiff's normal life. Plaintiff was off work for four weeks following the accident, and then returned to work without restrictions. Plaintiff left his employment as a maintenance man voluntarily, and began working for a landscaping business. Plaintiff had no physician-imposed restrictions on his employment. Plaintiff continued to work-full time as a body shop teaching assistant. He asserted that he was restricted from lifting more than 30 to 50 pounds; however, he ultimately acknowledged that this was merely a recommendation given to him by a therapist.

Self-imposed restrictions must be based on physical inability rather than pain in order to support a finding that a plaintiff has suffered a threshold injury. *Kreiner, supra* at 133 n 17; *McDaniel v Hemker*, 268 Mich App 269, 283; 707 NW2d 211 (2005).

Plaintiff asserted that after the accident he was no longer able to engage in activities such as playing pick-up basketball or bow hunting; however, plaintiff's restrictions on these activities were self-imposed. No evidence showed that the self-imposed restrictions were based on physical inability rather than on pain. *Id.*

The trial court did not err in concluding that no evidence created a question of fact as to whether plaintiff's objectively manifested injuries, while constituting serious impairments of body functions, affected plaintiff's general ability to lead his normal life. The trial court correctly granted summary disposition for defendants.

Affirmed.

/s/ Henry William Saad

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello